

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Access Charge Reform |) | CC Docket No. 96-262 |
| |) | |
| Reform of Access Charges Imposed by |) | |
| Competitive Local Exchange Carriers |) | |
| |) | |

**MINNESOTA CLEC CONSORTIUM REPLY
TO OPPOSITIONS**

The following Reply by the Minnesota CLEC Consortium is submitted in response to Oppositions to its Petition for Reconsideration of the Commission's Seventh Report and Order¹ (the "Order").

1. CLECs SHOULD NOT BE EXCLUDED FROM THE RURAL BENCHMARK FOR RURAL CUSTOMERS BASED ON THE LOCATION OF OTHER CUSTOMERS.

Rule 61.26(e) excludes a rural CLEC from application of the rural benchmark if it has even a single urban end-user. The Minnesota CLEC Consortium petitioned the Commission for reconsideration of this provision because the "all or nothing" application of the rural benchmark is inconsistent with the basic rationale for the rural benchmark.²

Sprint has urged the Commission to continue to exclude any CLEC that serves any urban customers.³ Sprint argues that allowing a CLEC to charge two different access rates for its rural and urban operations would violate the predicate for the rural benchmark.⁴ AT&T argues that

¹ *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, SEVENTH REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, FCC 01-146 (rel. April 27, 2001) (the "Order").

² *Order* at ¶ 67.

³ Opposition of Sprint Corporation to Petitions for Reconsideration at 8 (July 23, 2001) ("*Sprint Opposition*").

⁴ *Id.*

the rural benchmark should not apply to CLECs who also have any urban operations because these CLECs are capable of averaging the cost of serving high-cost rural areas with the lower cost of serving urban areas.⁵

These arguments should be rejected because they exaggerate the effect of a small number of urban access lines and thus fail to address the fundamental rationale that underlies the rural benchmark. The rural benchmark was established by the Commission in recognition of the substantially higher costs incurred by CLECs who serve rural areas.⁶ The Commission also noted that rural CLECs lack the lower-cost urban operations that can be used to offset the high cost of their rural end-users,⁷ and that these higher costs present a unfair disadvantage to CLECs competing in rural areas.⁸

The arguments of AT&T and Sprint ignore this fundamental rationale. Providing service to *some* urban customers does not eliminate the cost disadvantages faced by CLECs providing service in rural areas. Neither AT&T nor Sprint comes close to justifying the loss of the rural benchmark on the basis of a CLEC's service of *a single urban customer or even a small proportion* of urban customers.⁹ An "all or nothing" approach to rural benchmark ignores the higher costs incurred in serving rural areas, particularly if loss of the rural benchmark is triggered by one or a small number of customers in urban areas. A far more reasonable approach would be to apply the benchmark *to the extent* that a CLEC serves rural customers. That approach is also

⁵ Opposition of AT&T Corp. to Petitions for Reconsideration at 12 (July 23, 2001) ("*AT&T Opposition*"); WorldCom Opposition at 3 (July 23, 2001) ("*WorldCom Opposition*").

⁶ *Order* at ¶ 66.

⁷ *Id.*

⁸ *Order* at ¶ 64.

⁹ WorldCom was the only party to suggest that the size of the rural CLEC's rural operations could have some significance in the application of any exclusion. *WorldCom Opposition* at 3 (suggesting that

the most consistent with the rationale of the benchmark, that higher costs of serving rural areas justify higher access rates for CLECs serving those rural areas.

AT&T also argues that the Commission should not allow CLECs with any urban end-users to apply the rural benchmark to their rural access lines, because to do so will encourage inefficient entry.¹⁰ However, the Commission has already considered, and rejected, this argument¹¹ Further, CLECs will be fully aware of the limited duration of the rural benchmark and will be very unlikely to make the long term capital commitments needed for entry on the basis of that limited duration. AT&T's argument does not withstand scrutiny and should be rejected.

AT&T's argument is also at odds with the Commission's recognition that the rural benchmark "is consistent with the Commission's obligations" under Section 254(d)(3) and Section 706 of the Act "to encourage the deployment to rural areas of the infrastructure necessary to support advanced telecommunications services and of the services themselves."¹² Limiting the application of the rural benchmark to CLECs who serve only rural end-users will present a significant disadvantage for CLECs who serve both urban and rural areas.

CLECs could petition the Commission for waiver of the rule). The possibility of a waiver does not justify preservation of an unsound rule and would be time consuming and costly for small CLECs to obtain.

¹⁰ *AT&T Opposition* at 12.

¹¹ The *Order* reads in part:

We are also skeptical of AT&T's assertions about the incentives that would flow from a rural exemption. First, AT&T argues that the exemption would "create perverse incentives for uneconomic competitive entry by CLECs in any 'rural' areas in which it might be applicable." It appears from the record that both AT&T and Sprint have routinely been paying for CLEC access billed at the rate charged by the competing incumbent. If AT&T were accurate in its projection about higher access rates spurring a rash of uneconomic market entry in rural areas, such uneconomic entry should already have occurred in the territories of the rural incumbent carriers that charge NECA rates. However, the record fails to indicate such a trend.

Id. at ¶ 70.

2. APPLICATION OF THE RURAL BENCHMARK SHOULD NOT BE CONDITIONED ON THE IDENTITY OF THE COMPETING INCUMBENT LEC.

Rule 61.26(e) limits the application of the rural benchmark to rural CLECs who compete with a “non-rural ILEC.” The Minnesota CLEC Consortium petitioned for reconsideration of this rule because many ILECs that meet the definition of a “rural telephone company” serve substantial urban and suburban areas, obtaining many of the same cost advantages as even larger “non-rural ILECs.”

Sprint argues that the rule is appropriate, stating that the differences in the economies of scale between a rural CLEC and a rural price cap LEC are irrelevant.¹³ AT&T attempts to argue that the costs of rural CLECs and *all* rural ILECs are comparable.¹⁴ However, those arguments ignore the fact that the definitions of a “rural CLEC” and the definitions of “rural telephone companies” are not comparable. The definition of a “rural telephone company” (which provides the criteria for the a “non-rural LEC”) allows the ILEC to serve considerable numbers of urban and suburban customers and still remain a “rural telephone company.” In contrast, under the current rules, service to a single customer in an urban or suburban area disqualifies a CLEC from using the rural benchmark. Further, it is clear that most rural CLECs are substantially smaller than even the rural LECs that are subject to the price-cap provisions.

In short, the arguments of both Sprint and AT&T rest on the premise that a “rural CLEC” and a “rural ILEC” are able to serve the same areas. Since that premise is false, their arguments are invalid.

¹² *Order* at ¶ 65.

¹³ *Sprint Opposition* at 8.

¹⁴ *AT&T Opposition* at 11-12.

Further, Sprint's and AT&T's arguments reflect little more than their continued assertion that the rural benchmark amounts to a subsidy of rural CLEC operations by IXC's.¹⁵ However, the Commission has already considered and rejected this argument, instead finding that the IXCs were receiving a subsidy for service to rural customers as a result of the statewide averaging of access charges.¹⁶

Iowa Telecom Services ("ITS") opposes allowing rural CLECs to apply the rural benchmark for end-users located within its exchanges unless the Commission will allow it to charge the higher NECA access rates for its exchanges.¹⁷ ITS also argues that it was unfair for it to become subject to the *CALLS Order*.¹⁸ ITS appears to be seeking relief from the Commission in regards to its status as a price-cap ILEC. Further, it appears that ITS's difficulties are the result of its own decision, along with the unanticipated impact of the *CALLS Order*.¹⁹ While ITS's facts are unusual, they do not provide a basis for denial of petitions to reconsider rules that lead to unreasonable results in so many situations.

¹⁵ *AT&T Opposition* at 12-13; *Sprint Opposition* at 8.

¹⁶ The *Order* reads in part:

In adopting the rural exemption, we reject the characterization of the exemption as an implicit subsidy of rural CLEC operations. . . . This analysis leads us to conclude that the exemption we adopt today is not properly viewed as an implicit subsidy of rural CLEC operations. *Instead, it merely deprives IXCs of the implicit subsidy for access to certain rural customers that has arisen from the fact that non-rural ILECs average their access rates across their state-wide study areas.*

Id. at ¶ 67 (emphasis added).

¹⁷ *Opposition to Petition for Reconsideration and/or Clarification* at 3 ("*Iowa Telecom Opposition*").

¹⁸ *Iowa Telecom Opposition* at 9.

¹⁹ *Iowa Telecom Opposition* at 2.

3. THE NECA CCLC SHOULD BE INCLUDED IN THE RURAL BENCHMARK.

Rule 61.26(e) removes the CCLC from the benchmark if the rural CLEC competes with an ILEC that is subject to the *CALLS Order*.²⁰ The Minnesota CLEC Consortium requested reconsideration because the elimination of CCLC is inconsistent with the Commission's recognition of the far higher loop costs incurred by CLECs serving in rural areas.

Sprint supports the exclusion of the NECA CCLC in the calculation of the rural benchmark.²¹ Sprint states that the higher costs incurred by the rural CLEC are more properly passed on to the rural end-user.²² However, Sprint's position is fundamentally inconsistent with the Commission's recognition that rural CLECs should be allowed to recover their significantly higher loop costs. Sprint's arguments do not provide adequate support for the rule.

4. CONCLUSION.

For the forgoing reasons, the Minnesota CLEC Consortium respectfully requests that the Commission amend its rules as provided for in the Minnesota CLEC Consortium's Petition for Reconsideration.

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Respectfully submitted,

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²⁰ *Order* at ¶ 81.

²¹ *Sprint Opposition* at 7.

²² *Id.*

CERTIFICATE OF SERVICE

I, Kim R. Manney, do hereby certify that, on this 2nd day of August, 2001, I have caused the foregoing Minnesota CLEC Consortium Reply to Oppositions in CC Docket No. 96-262 to be filed electronically with the FCC by using its Electronic Comment Filing System, and copies of the Reply to Oppositions were served by first-class U.S. mail, postage prepaid, on the following parties:

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